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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 THOMAS DUDNEY, 2:02-cv-2416-GEB-CMK-P

12 Petitioner,

13 vs.

ORDER

14 EDWARD S. ALAMEIDA, JR., et al.,

15 Respondents.  
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17 Petitioner is a state prisoner proceeding on his petition for a writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254. Petitioner's habeas petition challenged his 1990 conviction of  
19 possession and transportation of methamphetamine with prior convictions. Petitioner appealed  
20 this court's denial of his petition. The Ninth Circuit Court of Appeals has issued a mandate  
21 reversing the denial of the petition, and remanded the case back to this court "with instructions to  
22 grant the habeas petition as to the imposition of the prior serious felony enhancement." (See  
23 Doc. 46, at 4).

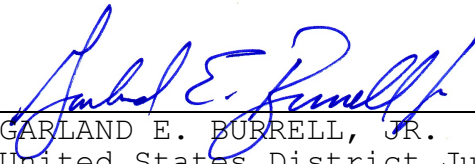
24 The Ninth Circuit found Petitioner's prior conviction, from 1974, did not include  
25 the charge of personal use of a firearm. The 1974 state judge had struck that charge from the  
26 information. Therefore, the Ninth Circuit concluded, "no reasonable trier of fact could conclude

1 that Dudney had been previously convicted of a prior serious felony, as required by California  
2 Penal Code § 667(a)(1).” (Id.) Accordingly, Petitioner needs to be re-sentenced.

3 Therefore, IT IS HEREBY ORDERED that:

- 4 1. Petitioner’s Petition for Writ of Habeas Corpus is granted;
- 5 2. Petitioner shall be re-sentenced within 30 days of entry of final judgment  
6 herein; and
- 7 3. The Clerk of the Court is directed to enter final judgment and close this  
8 file.

9 Dated: May 11, 2009

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12 GARLAND E. BURRELL, JR.  
United States District Judge  
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